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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1688

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
Appellant,

vs.

CHARLES R. BRADY, JR., CHAIRMAN STATE TAX COMMISSION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MOTION TO DISMISS OR AFFIRM

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MOTION TO DISMISS OR AFFIRM

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the appeal in this case be dismissed on the following grounds:

1. The appeal does not present a substantial federal question; and the judgment of the Supreme Court of the State of Mississippi rests on an adequate non-federal basis.

I.

STATEMENT OF THE CASE

This case involves an assessment for state income taxes levied by the Mississippi State Tax Commission (hereinafter referred to as "Tax Commission") against John Hancock Mutual Life Insurance Company (hereinafter referred to as "John Hancock"). The assessment in issue was levied under Section 9220-12 (1) (a), as amended, Mississippi Code of 1942, upon the interest income earned by John Hancock on its mortgage loan investments within the State of Mississippi during the years 1969, 1970, and 1971. The company, as part of its overall business activity in the State, made loans to residents of Mississippi secured by mortgages, or deeds of trust, on real property located within the State.

During the years covered by this suit, the appellant, John Hancock, was a Massachusetts corporation duly qualified with the State Insurance Commissioner to engage in business within the State of Mississippi (R. 104). The company itself was separated into various divisions, with the company's mortgage loan investments and life insurance activities being found in two different divisions. These divisions, along with the other related divisions of the Company, combined to form one corporation, John Hancock Mutual Life Insurance Company (R. 107, 109, 110, 221, 314, and 316). These various divisions were interrelated and dependent upon each other. As an example, the premium income received from the insurance division would be invested into mortgage loans from which interest income would be earned. The interest income thus earned would then be employed by the company to service its insurance obligations. Any surplus income remaining would then be returned to John Hancock policyholders in a dividend formula (R. 109-111). For two of the three years covered by the assessment, if John Hancock had merely been conducting an insurance business in the State, the company would have experienced a net loss. However, when the net mortgage investment income earned by the company in the State was included, a considerable net profit was realized.

As part of the company's business operations carried on in the State, the appellant made loans to residents of Mississippi secured by mortgages on real property located in the State. Such loans were closed in Mississippi (R. 226, 227, and 282); the deeds of trust were recorded in Mississippi (R. 162, 230, and 282); and in the event of foreclosure, the property was foreclosed upon in Mississippi (R. 162, 282, and 283). When foreclosure was deemed necessary, a member of the Mississippi Bar would be appointed by John Hancock to serve as substitute trustee to conduct the proceedings through the Mississippi judicial system (R. 275). All documents such as notes, deeds of trust, and mortgages were transferred to the company's home office in Boston, Massachusetts, after the loans were closed and the deeds of trust recorded (R. 275).

John Hancock also maintained a number of insurance offices and agents in the State of Mississippi (R. 67, 97, 104, 186, 219, 249, 259, 260), and had a full-time salaried employee in the State who devoted his time exclusively to the mortgage lending activities of the appellant (R. 219, 225, 226, and 235). It was contended by John Hancock in the lower court that this employee worked out of their Memphis office, but it was admitted that the employee averaged only one to one-and-a-half days a week there (R. 226). This employee lived in Cleveland, Mississippi, and, in fact, utilized his home as an office from

which he conducted a portion of the appellant's mortgage lending activity within the State (R. 225).

For the years covered by this assessment, 1969, 1970, and 1971, the appellant, John Hancock Mutual Life Insurance Company, paid no state income tax on the interest income earned from its mortgage lending activity in Mississippi (R. 453). The Mississippi State Tax Commission, pursuant to its authority under Section 9220-12(1)(a), as amended, Mississippi Code of 1942, assessed the company a total of $223,456.60 for the three years involved (R. 4). Said assessment was based upon a net investment income earned in Mississippi by John Hancock of $2,235,604.00 in 1969 (R. 452), $2,184,941.00 in 1970 (R. 453), and $2,160,992.00 in 1971 (R. 448).

The assessment of the Tax Commission was appealed to the Chancery Court of Hinds County, Mississippi, wherein a decree was entered on April 4, 1975, vacating and setting aside the assessment (Appendix A. 69, Jurisdictional Statement). On appeal to the Supreme Court of the State of Mississippi, the Court in a unanimous decision reversed the decree of the Chancery Court and reinstated the order of the Tax Commission affirming the assessment (Appendix A. 1-24, Jurisdictional Statement). The case is reported at 342 So. 2d 295 (1977).

II.

ARGUMENT

POINT 1

A Substantial Nexus Existed Between the Mortgage Investment Activities of John Hancock and the State of Mississippi to Sustain the Assessment of State Income Taxes on the Company's Interest Income Earned Within the State.

As noted previously in the Appellee's Statement of the Case, during the years 1969, 1970 and 1971, John Hancock Mutual Life Insurance Company was duly qualified and licensed with the State Insurance Commissioner to engage in business in the State of Mississippi. In addition to maintaining a number of insurance offices and agents within the State (R. 67, 97, 104, 186, 219, 249, 259-260), John Hancock also had a full-time salaried employee who lived and worked within the State and devoted his time exclusively to the mortgage lending activities of the appellant.

The recent decisions handed down by this Court in *National Geographic Society* v. *California Board of Equalization*, ... U.S. ....., 51 L. Ed. 2d 631, 97 S. Ct. ..... (1977), *Standard Pressed Steel Co.* v. *Washington*, 419 U.S. 560, 42 L. Ed. 2d 719, 95 S. Ct. 706 (1975) and *Complete Auto Transit, Inc.* v. *Brady*, ... U.S. ....., 51 L. Ed. 2d 326, 97 S. Ct. 1076 (1977), clearly establish the existence of sufficient nexus between John Hancock Mutual Life Insurance Company and the State of Mississippi to sustain the tax in question.

POINT 2

Issues Not Properly Raised by the Appellant in the Lower Courts Cannot Be Reviewed or Considered by the Supreme Court of the United States.

The general rule is that matters or issues not properly raised in the state courts cannot be reviewed by the Supreme Court of the United States on appeal thereto. *Waters* v. *City of St. Louis*, 347 U.S. 231, 98 L. Ed. 660, 74 S. Ct. 505 (1954); *Pickering* v. *Board of Education, et al.*, 391 U.S. 563, 20 L. Ed. 2d 811, 88 S. Ct. 1731 (1968); 5 C.J.S., *Appeal and Error*, § 1488 (1958).

The appellant in its jurisdictional statement (p. 3 and p. 25) raised for the first time the issue that the Tax Commission should have used an apportionment formula to determine John Hancock's unitary net income for state income tax purposes. However, the section referred to by the appellant, Section 9220-12 (1) (c), as amended, Mississippi Code of 1942, is totally inapplicable to the case at bar since it deals specifically with that income derived partly within and partly without the state. The income taxed herein by Section 9220-12 (1) (a), as amended, Mississippi Code of 1942, was derived entirely within the State of Mississippi. The income in question is thus not subject to the apportionment provisions of Section 9220-12 (1) (c).

The appellant also makes reference to the Massachusetts Gross Receipts Tax, which was in effect for only a portion of the period covered by the assessment herein (Jurisdictional Statement p. 8). This Massachusetts Statute, however, has no effect whatsoever on the assessment levied in the present case since the Tax Commission taxed only the income earned by John Hancock exclusively within the State of Mississippi. Therefore, if the appellant has

a due process or equal protection complaint, it should be with the State of Massachusetts for taxing the income earned by John Hancock entirely within the State of Mississippi and totally outside the State of Massachusetts.

POINT 3

Judgments of State Courts Should Not Be Reviewed by the Supreme Court of the United States Where Such Judgments Rest on Adequate and Independent State Grounds.

It is a long and well established rule that a judgment of the highest court in a state should not be interfered with on appeal to the Supreme Court of the United States when such judgment rests on adequate non-federal grounds. *Murdock* v. *City of Memphis*, 20 Wall. 590, 22 L. Ed. 429 (1875); *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 80 L. Ed. 158 (1935); *Jankovich* v. *Indiana Toll Road Commission*, 379 U.S. 487, 13 L. Ed. 2d 439, 85 S. Ct. 493 (1965); *Henry* v. *Mississippi*, 379 U.S. 443, 13 L. Ed. 2d 408, 85 S. Ct. 564, reh. den. 380 U.S. 926, 13 L. Ed 2d 813, 85 S. Ct. 878 (1965). See also, Charles Alan Wright, *Law of Federal Courts*, 2nd ed., § 107 (1970).

In the case at bar, the Supreme Court of the State of Mississippi found that the appellant, John Hancock Mutual Life Insurance Company, was engaging in business within the State of Mississippi, and that the company's insurance and mortgage investment activities could not be treated separately for state income tax purposes (Appendix A. 22, Jurisdictional Statement). The State Supreme Court, in interpreting the provisions of the Mississippi Income Tax Law, determined that the business activities of John Hancock within the State of Mississippi were taxable under Section 9220-12 (1) (a), as amended, Mississippi Code of 1972.

Appellee respectfully submits that the decision of the Mississippi Supreme Court rested on substantial non-federal grounds and should not be revised by this Court.

WHEREFORE, PREMISES CONSIDERED, appellee prays that the appeal in this case be dismissed or that the judgment of the Supreme Court of the State of Mississippi be affirmed.

Respectfully submitted,

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III.

CERTIFICATE OF SERVICE

I, James H. Haddock, one of the counsel for appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of June, 1977, I served copies of the foregoing Motion to Dismiss or Affirm on all parties required to be served, by depositing copies of said Motion to Dismiss or Affirm in the United States Post Office, properly addressed, with first class postage prepaid, to Mr. Warren V. Ludlam, Watkins, Pyle, Ludlam, Winter and Stennis, Post Office Box 427, Jackson, Mississippi 39205, counsel of record for the appellant.

JAMES H. HADDOCK